DB C. EXCISE APPEAL NO. 32/2007.

M/s Arihant Tiles and Marbles Pvt. Ltd.
Vs.
The Commissioner (Appeal-II), Jaipur.

Date : 23.05.2007

HON'BLE MR. P.B.MAJMUDAR, J.
HON'BLE MR. DINESH MAHESHWARI,J.

Mr. MS Singhvi, for the appellant.
Mr. VK Mathur, for the respondent.

BY THE COURT (Per Hon'ble Majmudar, J.)

By filing this appeal, the appellant has challenged the order dated 10.04.2007 passed by Customs, Excise and Service Tax Appellate Tribunal, New Delhi in Appeal No. 3794/2006. By the impugned order, the Tribunal has dismissed the appeal filed by the present appellant on the ground that by its earlier order dated 18.01.2007, the appellant was directed to deposit Rs.10 lacs as pre-deposit for hearing of the appeal in question. The appellant, thereafter requested for granting some more time for complying with the said condition precedent. However, it is an admitted fact that during the extended period, the appellant failed to comply with the said condition of pre-deposit and ultimatley by the impugned order dated 10.04.2007, the Tribunal passed the final order in appeal and the said appeal was dismissed for non-

compliance of the provisions of Section 35-F of the Act.

Learned counsel Mr. Singhvi, appearing for the appellant submitted that the appellant has a good case on merits and this is a fit case in which condition of pre-deposit should have been waived by the Tribunal.

It was submitted that the Tribunal may be directed to hear the appeal without insisting to comply with the condition of pre-deposit. However, having realised the fact that the order passed by the Tribunal dated 18.01.2007 by which the appellants were directed to deposit Rs.10 lacs for hearing the appeal was never challenged by the appellant, Mr. Singhvi has ultimately agreed after taking instructions from his client that appellant is ready and willing to deposit Rs.10 lacs within stipulated period and requested that the appeal may be directed to be decided on merits so that the appellant may put his case before the Tribunal on merits. On such a proposition made by Mr Singhvi, learned counsel Mr VK Mathur appearing for the respondent, though expressed some reservations but could not put proposition to serious contention, and in our view rightly so because the

proposition is substantially in the interest of revenue too.

Though as per the provisions of Section 35-G of the Central Excise Act, 1954, a substantial question of law is required to be formulated and on such formulated question, the appeal is required to be decided, so far as facts of the present case are concerned since there is prevailing, more or less, a consensus between the learned counsel appearing for respective parties by which the appellant has agreed to deposit the amount of Rs. 10 lacs by way of pre-deposit for deciding the appeal before the Tribunal we are not framing substantial question of law at the time of disposing of the appeal. However, we make it clear that this order may not be treated as precedent in any other case as this order is passed in view of concession given by both the learned counsel in this appeal.

In our view, since learned counsel for the appellant Mr. Singhvi has submitted that the appellant is ready and willing to deposit Rs.10 lacs as ordered by the Tribunal earlier vide order dated 18.01.2007, it would be just and proper to allow the appellant to argue his case on merits before the Tribunal.

Accordingly, we direct that in case the appellant deposits Rs.10 lacs before the Tribunal on or before 30.06.2007, on such deposit the appeal shall stand revived and the Tribunal shall decide the same on merits and in accordance with law. However, in case the amount is not deposited the order of the Tribunal dismissing the appeal shall remain. It is clarified that on merits of the issue involved in the appeal we have not expressed any opinion as it is for the Tribunal to decide the same in accordance with law and as observed above, this order is passed in view of the facts and circumstances of the case and this order may not be treated as precedent in future in any other case.

The appeal is disposed of accordingly.

(DINESH MAHESHWARI), J. (P.B.MAJMUDAR), J.

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